

109TH CONGRESS
1ST SESSION

S. 1699

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2005

Mr. SPECTER (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, Mr. CORNYN, Mr. BROWNBACK, Mr. VOINOVICH, Mr. FEINGOLD, Mr. LEVIN, Mr. BAYH, Mr. REED, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stop Counterfeiting in Manufactured Goods Act”.

6 (b) FINDINGS.—The Congress finds that—

7 (1) the United States economy is losing millions
8 of dollars in tax revenue and tens of thousands of

1 jobs because of the manufacture, distribution, and
2 sale of counterfeit goods;

3 (2) the Bureau of Customs and Border Protec-
4 tion estimates that counterfeiting costs the United
5 States \$200 billion annually;

6 (3) counterfeit automobile parts, including
7 brake pads, cost the auto industry alone billions of
8 dollars in lost sales each year;

9 (4) counterfeit products have invaded numerous
10 industries, including those producing auto parts,
11 electrical appliances, medicines, tools, toys, office
12 equipment, clothing, and many other products;

13 (5) ties have been established between counter-
14 feiting and terrorist organizations that use the sale
15 of counterfeit goods to raise and launder money;

16 (6) ongoing counterfeiting of manufactured
17 goods poses a widespread threat to public health and
18 safety; and

19 (7) strong domestic criminal remedies against
20 counterfeiting will permit the United States to seek
21 stronger anticounterfeiting provisions in bilateral
22 and international agreements with trading partners.

23 **SEC. 2. TRAFFICKING IN COUNTERFEIT MARKS.**

24 Section 2320 of title 18, United States Code, is
25 amended as follows:

1 (1) Subsection (a) is amended by inserting after
2 “such goods or services” the following: “, or inten-
3 tionally traffics or attempts to traffic in labels,
4 patches, stickers, wrappers, badges, emblems, medal-
5 lions, charms, boxes, containers, cans, cases,
6 hangtags, documentation, or packaging of any type
7 or nature, knowing that a counterfeit mark has been
8 applied thereto, the use of which is likely to cause
9 confusion, to cause mistake, or to deceive,”.

10 (2) Subsection (b) is amended to read as fol-
11 lows:

12 “(b)(1) The following property shall be subject to for-
13 feiture to the United States and no property right shall
14 exist in such property:

15 “(A) Any article bearing or consisting of a
16 counterfeit mark used in committing a violation of
17 subsection (a).

18 “(B) Any property used, in any manner or part,
19 to commit or to facilitate the commission of a viola-
20 tion of subsection (a).

21 “(2) The provisions of chapter 46 of this title relating
22 to civil forfeitures shall extend to any seizure or civil for-
23 feiture under this section. At the conclusion of the for-
24 feiture proceedings, the court, unless otherwise requested
25 by an agency of the United States, shall order that any

1 forfeited article bearing or consisting of a counterfeit
2 mark be destroyed or otherwise disposed of according to
3 law.

4 “(3)(A) The court, in imposing sentence on a person
5 convicted of an offense under this section, shall order, in
6 addition to any other sentence imposed, that the person
7 forfeit to the United States—

8 “(i) any property constituting or derived from
9 any proceeds the person obtained, directly or indi-
10 rectly, as the result of the offense;

11 “(ii) any of the person’s property used, or in-
12 tended to be used, in any manner or part, to com-
13 mit, facilitate, aid, or abet the commission of the of-
14 fense; and

15 “(iii) any article that bears or consists of a
16 counterfeit mark used in committing the offense.

17 “(B) The forfeiture of property under subparagraph
18 (A), including any seizure and disposition of the property
19 and any related judicial or administrative proceeding, shall
20 be governed by the procedures set forth in section 413
21 of the Comprehensive Drug Abuse Prevention and Control
22 Act of 1970 (21 U.S.C. 853), other than subsection (d)
23 of that section. Notwithstanding section 413(h) of that
24 Act, at the conclusion of the forfeiture proceedings, the
25 court shall order that any forfeited article or component

1 of an article bearing or consisting of a counterfeit mark
 2 be destroyed.

3 “(4) When a person is convicted of an offense under
 4 this section, the court, pursuant to sections 3556, 3663A,
 5 and 3664, shall order the person to pay restitution to the
 6 owner of the mark and any other victim of the offense
 7 as an offense against property referred to in section
 8 3663A(c)(1)(A)(ii).

9 “(5) The term ‘victim’, as used in paragraph (4), has
 10 the meaning given that term in section 3663A(a)(2).”.

11 (3) Subsection (e)(1) is amended—

12 (A) by striking subparagraph (A) and in-
 13 serting the following:

14 “(A) a spurious mark—

15 “(i) that is used in connection with
 16 trafficking in any goods, services, labels,
 17 patches, stickers, wrappers, badges, em-
 18 blems, medallions, charms, boxes, con-
 19 tainers, cans, cases, hangtags, documenta-
 20 tion, or packaging of any type or nature;

21 “(ii) that is identical with, or substan-
 22 tially indistinguishable from, a mark reg-
 23 istered on the principal register in the
 24 United States Patent and Trademark Of-

1 fice and in use, whether or not the defend-
2 ant knew such mark was so registered;

3 “(iii) that is applied to or used in con-
4 nection with the goods or services for
5 which the mark is registered with the
6 United States Patent and Trademark Of-
7 fice, or is applied to or consists of a label,
8 patch, sticker, wrapper, badge, emblem,
9 medallion, charm, box, container, can,
10 case, hangtag, documentation, or pack-
11 aging of any type or nature that is de-
12 signed, marketed, or otherwise intended to
13 be used on or in connection with the goods
14 or services for which the mark is registered
15 in the United States Patent and Trade-
16 mark Office; and

17 “(iv) the use of which is likely to
18 cause confusion, to cause mistake, or to
19 deceive; or”; and

20 (B) by amending the matter following sub-
21 paragraph (B) to read as follows:

22 “but such term does not include any mark or des-
23 ignation used in connection with goods or services,
24 or a mark or designation applied to labels, patches,
25 stickers, wrappers, badges, emblems, medallions,

1 charms, boxes, containers, cans, cases, hangtags,
 2 documentation, or packaging of any type or nature
 3 used in connection with such goods or services, of
 4 which the manufacturer or producer was, at the time
 5 of the manufacture or production in question, au-
 6 thorized to use the mark or designation for the type
 7 of goods or services so manufactured or produced,
 8 by the holder of the right to use such mark or des-
 9 ignation.”.

10 (4) Section 2320 is further amended—

11 (A) by redesignating subsection (f) as sub-
 12 section (g); and

13 (B) by inserting after subsection (e) the
 14 following:

15 “(f) Nothing in this section shall entitle the United
 16 States to bring a criminal cause of action under this sec-
 17 tion for the repackaging of genuine goods or services not
 18 intended to deceive or confuse.”.

19 **SEC. 3. SENTENCING GUIDELINES.**

20 (a) REVIEW AND AMENDMENT.—Not later than 180
 21 days after the date of enactment of this Act, the United
 22 States Sentencing Commission, pursuant to its authority
 23 under section 994 of title 28, United States Code, and
 24 in accordance with this section, shall review and, if appro-
 25 priate, amend the Federal sentencing guidelines and policy

1 statements applicable to persons convicted of any offense
2 under section 2318 or 2320 of title 18, United States
3 Code.

4 (b) AUTHORIZATION.—The United States Sentencing
5 Commission may amend the Federal sentencing guidelines
6 in accordance with the procedures set forth in section
7 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)
8 as though the authority under that section had not ex-
9 pired.

10 (c) RESPONSIBILITIES OF UNITED STATES SEN-
11 TENCING COMMISSION.—In carrying out this section, the
12 United States Sentencing Commission shall determine
13 whether the definition of “infringement amount” set forth
14 in application note 2 of section 2B5.3 of the Federal sen-
15 tencing guidelines is adequate to address situations in
16 which the defendant has been convicted of one of the of-
17 fenses listed in subsection (a) and the item in which the
18 defendant trafficked was not an infringing item but rather
19 was intended to facilitate infringement, such as an anti-
20 circumvention device, or the item in which the defendant
21 trafficked was infringing and also was intended to facili-
22 tate infringement in another good or service, such as a
23 counterfeit label, documentation, or packaging, taking into

1 account cases such as U.S. v. Sung, 87 F.3d 194 (7th
2 Cir. 1996).

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